

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re:

**Lindsay Lampasona, LLC**  
Debtor

Chapter 7  
Case No. 11-19747 JNF

**TRUSTEE'S MOTION TO CONDUCT RULE 2004  
EXAMINATION OF JOHN C. KELLY  
[Emergency Determination Requested]**

Pursuant to Fed. R. Bankr. P. 2004, Lynne F. Riley, duly appointed Chapter 7 Trustee (“Trustee”) for the estate of Lindsay Lampasona, LLC (“Debtor”), respectfully requests that the Court enter an order authorizing the Trustee to conduct a Rule 2004 Examination of John C. Kelly. In support hereof, the Trustee states as follows:

1. The within debtor (“Debtor”) filed a Chapter 11 petition on October 14, 2011.

2. On October 19, 2011, the Debtor filed the *Debtor's Motion (A) to Authorize Debtor to Effectuate Purchase and Sale Agreement with Rykor Concrete & Civil Inc.; (B) to Authorize Sale of Assets by Private Sale Free and Clear of Liens, Claims and Interests; (C) to Authorize the Assumption and Assignment of Executory Contracts, and (D) for Related Relief* (“Sale Motion”) [Docket No. 17].

3. Pursuant to the Sale Motion, the Debtor sought authority to enter into an Asset Purchase Agreement (“APA”) with Rykor Concrete & Civil Inc. (“Rykor”), wherein Rykor would purchase substantially all of the Debtor’s tangible assets for a purchase price of \$448,000 (“Purchase Price”).

4. The APA was executed by the Debtor's CEO, Devin Hartnell ("Hartnell"), and Rykor's CEO, John C. Kelly ("Kelly"). The APA is dated as of September 2011.<sup>1</sup>

5. On November 16, 2011, the Debtor filed a motion to amend the Sale Motion and APA to exclude a certain executory contract from the purchased assets, which was granted by the Court on November 22, 2011.

6. On December 30, 2011, the Court entered an order granting the Sale Motion and approving the sale of the Debtor's assets to Rykor.

7. Upon information and belief, Kelly was Rykor's founder and principal investor. Rykor was registered to do business in Massachusetts on August 26, 2011.

8. Upon information and belief, the Debtor's principals, Patrick "PJ" Lampasona, Jr. and Anthony "Tony" Lampasona collaborated with Kelly in arranging for the creation of Rykor and the sale of the Debtor's assets to Rykor, with the day to day operation of the company remaining under Tony and PJ's control.

9. Upon information and belief, PJ's mother, Mary Lampasona ("Mary"), was an employee of the Debtor who was hired by Rykor after the sale. Mary had advanced \$150,000 to the Debtor on or about July 16, 2009.

10. Upon information and belief, in conjunction with the sale to Rykor, Kelly agreed to repay Mary's advance at the request of PJ, Tony, and/or Hartnell under a side agreement that was not disclosed to this Court, creditors, or parties in interest as part of the sale process.

11. Upon information and belief, the agreement remained in place even after the bankruptcy filing and the filing of the Sale Motion.

12. On May 21, 2012, the Debtor's case was converted to a case under Chapter 7, and Lynne F. Riley was duly appointed as Trustee of the Debtor's bankruptcy estate.

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<sup>1</sup> The APA states it is "effective as of the \_\_\_\_ day of September 2011" with no date filled in.

13. By this motion, pursuant to Bankruptcy Rule 2004, the Trustee seeks authority to conduct an examination of Kelly with respect to the sale process, any payment to Mary or any promise to pay Mary on account of her advance, and any other agreements to pay other insiders of the Debtor or creditors of the Debtor as part of the sale process.

14. The Trustee also seeks production of documents concerning payments to Mary by Kelly or any entity controlled by Kelly, or any promise to make such payment, as set forth in the attached **Exhibit A**.

15. The Trustee seeks emergency determination of this motion. The Trustee issued a subpoena to Kelly on July 16, 2011 and has received no response to date. The Trustee believes that an action based on Kelly's testimony or documents produced by Kelly would potentially be subject to the limitations period of 11 U.S.C. § 546. Therefore, emergency determination is warranted.

WHEREFORE, the Trustee respectfully requests that the Court enter an order:

1. Granting this motion;
2. Granting emergency determination of this motion; and
3. Granting such other and further relief as is just and proper.

Lynne F. Riley, Chapter 7 Trustee,  
by her attorneys,

/s/ David Koha  
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David Koha, BBO #679689  
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Dated: September 5, 2013

## CERTIFICATE OF SERVICE

I, David Koha, hereby certify that on September 5, 2013, I served a copy of the foregoing, electronically through the Court's CM/ECF System, or by email by agreement, or by first-class mail, to the following:

### By CM/ECF:

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